

THIS OPINION WAS NOT WRITTEN FOR PUBLICATION

The opinion in support of the decision being entered today (1) was not written for publication in a law journal and (2) is not binding precedent of the Board.

Paper No. 14

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte MICHAEL PIETRAFESA

Appeal No. 1999-2730
Application 09/008,836

ON BRIEF

Before ABRAMS, PATE, and CRAWFORD, Administrative Patent Judges.

PATE, Administrative Patent Judge.

DECISION ON APPEAL

This is an appeal from the examiner's refusal to allow claims 1 and 3 through 6 as amended after the final rejection. These are all the claims in the application.

The claimed invention is directed to a gift package for accommodating a gift such as a doll or stuffed animal. The gift package is in the shape of a baby bottle and is comprised

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of a

cylindrical plastic container and a cap with a simulated nipple that fastens to the container.

The claimed invention can be further understood with reference to the appealed claims which are appended to appellant's brief.

The references of record relied upon by the examiner as evidence of obviousness are:

Whitney 1964	3,118,562	Jan. 21,
Stevens 1967	3,297,193	Jan. 10,
Tancredi 1974	3,811,565	May 21,
Cooper 1994	5,312,282	May 17,

Applicant's own admission on Pages 2-4 of the instant application. (hereinafter Applicant's admission).

THE REJECTIONS

Claims 1, 3 and 5 stand rejected under 35 U.S.C. § 103 as unpatentable over Whitney in view of Stevens and the admitted prior art.

Claim 4 stands rejected under 35 U.S.C. § 103 as

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unpatentable over Whitney in view of Stevens and the admitted prior art, and further in view of Cooper.

Claim 6 stands rejected under 35 U.S.C. § 103 as unpatentable over Whitney in view of Stevens and the admitted prior art, and further in view of Tancredi.

OPINION

We have carefully reviewed the rejections on appeal in light of the arguments of the appellant and the examiner. As a result of this review, we have determined that the applied prior art does not establish a prima facie case of obviousness with respect to the claims on appeal. Therefore, the rejections on appeal are reversed. Our reasons follow.

We are generally in agreement with the examiner's findings of fact with respect to the Whitney reference. Whitney discloses a carafe and cup combination for use in hospitals. Whitney's cap 20 has a circular flange and a lower cylindrical stopper section 21. On the stopper section are circumferentially spaced projections 23. The examiner regards these projections as an array of vertical ledges as called for

in claim 1.

Turning to the patent to Stevens, Stevens discloses a container closure for forming a normally permanent closure on a container, the closure being relatively non-removable. The embodiments of Stevens show the end of a paperboard container folded over to present a top edge 14 and a downwardly directed skirt 17 which ends in an edge 23 facing downwardly. Stevens

discusses several embodiments, two of which are directed to forming a normally permanent closure on a container and one of which cannot be easily resealed once it is removed from the container.

Inasmuch as Stevens does not show a rolled rim defining an annular bead as argued by appellant, it is our view that the references to Whitney and Stevens, if combined as the examiner proposes, would not have rendered the subject matter of claim 1 prima facie obvious. Furthermore, inasmuch as Stevens discloses that his container is normally either permanently closed or cannot be easily tightly sealed again after the

closure is removed (Fig. 5 embodiment), it is our view that Stevens does not suggest, and in fact, teaches away from the examiner's combination of references. Certainly, the carafe of Whitney is designed to be opened and closed many times during its use. The closure of Stevens is not. The design of Stevens is antithetical to a container fastener designed to be opened and closed readily throughout its life by the user. The citation of appellant's prior art does not remedy the problems we have found in the combination of Stevens and Whitney. For these reasons, the rejection of claims 1, 3 and 5 is reversed.

We have further considered the additional prior art cited against dependent claims 4 and 6, but we find therein no disclosure, teaching or suggestion that ameliorates the problems we have found with respect to the references used in the rejection of claims 1, 3 and 5. Accordingly, the rejections of claims 4 and 6 are also reversed.

REVERSED

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NEAL E. ABRAMS)	
Administrative Patent Judge)	
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)	BOARD OF PATENT
WILLIAM F. PATE, III))
Administrative Patent Judge)	APPEALS AND
)	
)	INTERFERENCES
)	
MURRIEL E. CRAWFORD))
Administrative Patent Judge)	

MICHAEL EBERT
HOPGOOD, CALIMAFDE,
KALIL & JUDLOWE
60 E. 42nd STREET
NEW YORK, N.Y. 10165

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